



Decision and Reasons for Decision

Citation: *Underwood and Department of Housing and Public Works (No. 2)* [2016] QICmr 36 (15 September 2016)

Application Number: 100103 (remitted matter 310531)

Applicant: Underwood

Respondent: Department of Housing and Public Works

Decision Date: 15 September 2016

Catchwords: ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL TO DEAL WITH APPLICATIONS – information subject of earlier access application and completed external review and duplicated information – whether the Information Commissioner should decide to not further deal under section 94(1)(a) of the *Right to Information Act 2009* (Qld) with part of external review application concerning information previously considered or duplicated information

ADMINISTRATIVE LAW – RIGHT TO INFORMATION – SCOPE OF APPLICATION – application for access to information – agency excluded information falling outside the scope, or irrelevant to the terms, of the access application – whether irrelevant information may be deleted under section 73 of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – EXEMPT INFORMATION – LEGAL PROFESSIONAL PRIVILEGE – whether information is exempt on the basis of legal professional privilege under schedule 3, section 7 of the *Right to Information Act 2009* (Qld) – whether access may be refused under section 47(3)(a) of the *Right to Information Act 2009* (Qld)

ADMINISTRATIVE LAW – RIGHT TO INFORMATION – REFUSAL OF ACCESS – CONTRARY TO PUBLIC INTEREST INFORMATION – access refused to information about other individuals – personal information and privacy – whether disclosure would, on balance, be contrary to public interest – whether access may be refused under sections 47(3)(b) and 49 of the *Right to Information Act 2009* (Qld)

REASONS FOR DECISION

Summary

1. The applicant applied¹ to the Department of Communities (**Communities**) under the *Right to Information Act* (Qld) (**RTI Act**) for 'the complete file' concerning a specified residential unit. The applicant was a public housing tenant of the unit at the time she made her application.
2. In its decision dated 13 December 2010, Communities advised that it had located '1173 pages' of information across five files in processing the applicant's access application, and had decided to:
 - *Omit one page and parts of eight pages which are not relevant to...[the applicant's] application;*
 - *Omit 317 pages which are outside the scope of...[the] application;*
 - *refuse access to 32 pages;*
 - *partially release 68 pages; and*
 - *give full access to 754 pages.*²
3. The applicant applied³ to the Office of the Information Commissioner (**OIC**) for external review of Communities' decision. OIC did not determine substantive issues arising from the applicant's external review application, but decided⁴ not to further deal with that application, in accordance with section 94(1)(a) of the RTI Act (**Original Decision**).
4. The applicant appealed OIC's decision to the Queensland Civil and Administrative Tribunal (**QCAT**). By order dated 23 October 2014,⁵ QCAT set aside the Original Decision and remitted the matter to OIC to be dealt with according to the provisions of the RTI Act.
5. OIC reopened the external review and I have considered the matter afresh. A considerable amount of information originally in issue was released to the applicant during the review. As for the balance, I have decided:
 - not to further deal with parts of the applicant's external review application under section 94(1)(a) of the RTI Act, on the basis that they are frivolous, vexatious, misconceived or lacking in substance;
 - that segments of information appearing on some pages are irrelevant information which may be deleted from those pages, while other pages fall outside the scope of the applicant's access application, and may be excluded from consideration;
 - that access may be refused to remaining information, on the grounds it comprises:-
 - legally privileged and therefore exempt information; or
 - information the disclosure of which would, on balance, be contrary to the public interest; or
 - information that is nonexistent or unlocatable.

¹ Application dated 13 September 2010.

² These figures stated in Communities' decision only tally on my reckoning to 1172 pages. This appears to be a clerical oversight; 1173 pages were supplied to OIC by Communities for the purposes of external review 310531. Communities also released some information to the applicant administratively prior to making its decision, under cover of a letter to the applicant dated 21 October 2010 (a copy of which letter and its enclosures accompanied the applicant's application for external review). Given its release, that information is not in issue in this review.

³ Application dated 17 January 2011. This application was received after the prescribed time for making an application for external review under the RTI Act had elapsed. The RTI Commissioner nevertheless exercised the discretion under the Act to extend the time for the making of the application.

⁴ By decision dated 9 February 2011. OIC in this decision also decided not to deal with three other external review applications lodged by the applicant, each seeking review of decisions made or taken to have been made by Communities or the-then Minister for Communities.

⁵ *Underwood and Department of Housing and Public Works; Minister for Housing and Public Works and Information Commissioner* (APL075-12), per Justice Cullinane.

Background

6. The period between OIC's Original Decision and this decision has seen various machinery of government changes. The respondent agency is now the Department of Housing and Public Works (**HPW**).
7. Significant procedural steps are set out in Appendix 1 to these reasons.
8. I note that on 28 June 2016 the applicant lodged with OIC a 109-page submission.⁶ This lengthy document largely fails to engage with the substantive issues to be determined in this review, much of it comprising irrelevant and excessive detail concerning procedural or other extraneous matters. Nevertheless, I have carefully reviewed the document (together with all other material relied on by the applicant), and endeavoured to distil pertinent submissions where possible.

Reviewable decision

9. The decision under review is Communities' decision dated 13 December 2010.

Material considered

10. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and appendix).

Information in issue

11. The information in issue is identified in Appendix 2.⁷ This information includes:
 - information to which Communities originally refused the applicant access (including on the basis of scope and/or relevance);
 - a further 'File06', which appears to have been located by Communities during initial processing but was not dealt with in its decision;
 - a number of pages assessed for the first time by HPW in the course of this remitted external review;
 - documents contained on 'Files07–18', being files located by Communities in March 2011, during OIC's original external review (**Further Files**); and
 - four pages identified as relevant by OIC, and appearing in procedural materials⁸ forwarded to OIC by Communities during the original external review (**Additional Pages**).
12. OIC has forwarded to HPW with these reasons a PDF file containing the information in issue, identifying those pages or parts of pages dealt with in these reasons.
13. In view of the large number of pages in issue, I have adopted a degree of generalisation in these reasons. This is in keeping with the approach to voluminous applications endorsed by Woodward J of the Federal Court of Australia in *News Corporation Ltd & Ors v National Companies and Securities Commission*,⁹ His Honour observing that: '*... if the Freedom of Information legislation is to remain workable, it must be open to a respondent, and to the AAT [as the independent review tribunal], to deal with large numbers of documents with a degree of generalisation appropriate to the case.*'¹⁰

⁶ Plus enclosures.

⁷ Which, for the sake of completeness, includes Communities' original file and page referencing where applicable.

⁸ Relevantly, records of searches undertaken by Communities in processing the applicant's access application.

⁹ (1984) 57 ALR 550.

¹⁰ Page 562.

Procedural issues

Request for submissions

14. The applicant requested¹¹ that she be provided with any agency submissions lodged with OIC. Exercising my discretion under 95(1)(a) of the RTI Act, I have declined to do so, in order that participants may focus on issues salient to the review, to ensure compliance with section 108 of the RTI Act, and to endeavour to resolve this matter as expeditiously as possible.¹² I have nevertheless ensured that the applicant has been advised of any preliminary view I have formed in the course of the review, where such view has been adverse to her interests, and apprised her of the material on which I have based such a view. I am satisfied that the applicant has been afforded procedural fairness in the circumstances of this review.

Time allowed for making submissions

15. By letter dated 31 May 2016, I wrote to the applicant explaining my preliminary view on the bulk of the issues in this external review.¹³ The standard practice of OIC is to allow review participants 10 business days to reply to correspondence of this kind, with extensions often granted if requested. In this case I allowed more time, until 28 June 2016.
16. The applicant's reply to that letter was in the form of the submissions referred to in paragraph 8, in which, among other things, she contends she was given 'insufficient time' to respond to my preliminary view. Despite this, she expressly declined to request additional time in which to lodge any further reply.¹⁴ Despite her complaints as to 'insufficient time' generally and in response to specific substantive matters, the applicant generated an expansive submission traversing a multitude of issues in reply to my preliminary view, many of which are, as noted,¹⁵ of no relevance to this review.
17. In the circumstances, I am satisfied that the applicant has been given adequate opportunity to put her case in this external review. I turn now to explain the reasons for my findings as summarised in paragraph 5.

Decision not to further deal

Information dealt with in previous external review

18. Several pages in issue comprise duplicates of documents dealt with previously under the RTI Act, as a result of the applicant's access application to HPW dated 28 February 2011 and OIC's external review of HPW's decision on that access application.¹⁶ That review was finalised by way of formal decision: *Underwood and Department of Housing and Public Works (Underwood)*.¹⁷ The schedule forming Appendix 2 to this decision cross-references pages in issue in this review against corresponding pages dealt with in that earlier matter.

¹¹ Submissions dated 28 June 2016.

¹² A position consistent with that adopted by OIC and explained to the applicant in two related reviews: *Underwood and Minister for Housing and Public Works* [2015] QICmr 27 (29 September 2015) (*Underwood and Minister*), [18]-[19], and *Underwood and Department of Housing and Public Works (No. 1)* [2016] QICmr 11 (17 March 2016) (*Underwood (No. 1)*), [15]-[16].

¹³ Further correspondence was sent to the applicant on 30 and 31 August 2016. These letters dealt with the Additional Pages, extending the reasoning set out in my 31 May 2016 letter to some of the segments of information deleted from these pages and conveying a preliminary view that access to another segment may be refused. I allowed the applicant to 22 September 2016 to reply to this latter correspondence; by letter dated 6 September 2016, the applicant advised she would not be making any further submissions.

¹⁴ See paragraph 57 at page 63 of the applicant's 28 June 2016 submissions.

¹⁵ Paragraph 8.

¹⁶ External review no. 310671.

¹⁷ (Unreported, Queensland Information Commissioner, 18 May 2012).

19. For the reasons explained below, I decide not to further deal with the applicant's external review application, to the extent it concerns 'repeat' information (**Repeat Information**) of the kind described in the preceding paragraph.

Application of section 94(1)(a) of the RTI Act

20. Section 94(1)(a) of the RTI Act provides:

(1) *The information commissioner may decide not to deal with, or not to further deal with, all or part of an external review application if—*

(a) *the commissioner is satisfied the application, or the part of the application, is frivolous, vexatious, misconceived or lacking substance*

21. The power prescribed in section 94(1)(a) of the RTI Act is applicable to the extent an external review applicant seeks information that has been dealt with under the RTI Act in the course of prior applications by that applicant.¹⁸ As the Information Commissioner has stated, an application of this kind:¹⁹

...would clearly be vexatious, and contrary to the principle that a decision by a court or tribunal resolves the issues in dispute between the parties. A litigant cannot seek multiple hearings of the same issues between parties - that is vexatious and oppressive to the other party and to the relevant court or tribunal, and unfair to other citizens waiting their turn to use the dispute resolution services, provided from public funds, by courts and tribunals.

22. Applying the above reasoning, to the extent the applicant's external review application seeks to revisit information and issues dealt with previously under the RTI Act, I consider that it is frivolous, vexatious, misconceived or lacking in substance. Accordingly, I decide not to deal with, or not to further deal with, that aspect of the applicant's external review application under s.94(1)(a) of the RTI Act, and to therefore deal no further with repeat pages (or parts) as identified in Appendix 2.
23. In making this finding, I have taken into account the fact that the access application ultimately the subject of this external review no. 100103 was made to Communities, whereas the access application leading to external review no. 310671 was made to HPW.²⁰ I consider, however, that revisiting information and issues determined pursuant in access and external review applications the subject of external review no. 310671 would essentially involve a re-hearing of issues already finally determined as between the applicant and HPW.
24. As explained by the RTI Commissioner in *Underwood (No. 1)*,²¹ HPW was, at the time the applicant made the access applications noted in the preceding paragraph, providing legal services to Communities. Communities sought legal advice from HPW in relation to issues concerning the applicant. Documents and information dealt with in external review no. 310671 were thus derived from HPW's legal files.

¹⁸ *Price and Local Government Association of Queensland Inc* (S 111/01, 29 June 2001, unreported) (**Price and LGAQ**). This decision concerned section 77(1)(a) of the repealed *Freedom of Information Act 1992* (Qld) (**FOI Act**). Contrary to the applicant's submissions dated 28 June 2016, I am satisfied that section 77(1)(a) of the FOI Act was the material equivalent of section 94(1)(a) of the RTI Act, differing only in superficial respects. The comments of the Information Commissioner in *Price and LGAQ* are therefore applicable in this case.

¹⁹ *Price and LGAQ*, at [15]. The Information Commissioner went on to note that '[i]t is equally vexatious and oppressive to agencies to make repeated applications for the same documents...': [16]. The notion that frivolous or vexatious conduct may incorporate 'oppressive' conduct as alluded to by the Information Commissioner in this passage has been recognised by the Court of Appeal: *Mudie v Gainriver Pty Ltd* (No 2) [2003] 2 Qd R 271, [36]-[37] (**Mudie v Gainriver**).

²⁰ In her 28 June 2016 submissions, the applicant notes that HPW was, at the time she lodged the access application ultimately the subject of External Review No. 310671 and OIC's decision in *Underwood*, the 'Department of Public Works'. I cannot see that anything of any substance turns on this. In the same submissions, she also insists that this earlier review is 'irrelevant'; as should be clear from these reasons, I disagree.

²¹ Citation at note 12. Relevant observations of the RTI Commissioner commence at paragraph [26] of this decision.

25. The Repeat Information in issue in this review comprises, to quote the RTI Commissioner in *Underwood (No. 1)*, the 'flip side of the coin';²² the same information, as held by Communities and communicated to HPW in the course of the former seeking the latter's advice. These pages were partly released to the applicant pursuant to her access application dated 28 February 2011 lodged with HPW and through the consequent external review no. 310671. Without fully re-hearing the issue,²³ I consider that the grounds for refusing access in that earlier and completed review would apply equally in this matter.
26. It is also relevant to note that I am required to consider relevant facts and circumstances as they now stand.²⁴ As a result of machinery of government changes, the documents in issue in this review are HPW documents – as has been the case for some time. HPW was, by the time of the remitting order of Cullinane J, the relevant respondent in QCAT proceedings APL075-12. HPW is:
- the respondent in this external review;
 - the agency that has collated and assessed all relevant information in response to the access application the subject of this review; and
 - the agency with whom OIC has conducted all meaningful liaison as regards refusal of access and disclosure.
27. HPW is, in short, the respondent agency that did all the 'legwork' in review no. 310671, and has done so again in response to the access and external review applications the subject of the current review.
28. To conclude, I consider that revisiting information and issues determined pursuant to the access and external review applications the subject of external review no. 310671 would involve a further hearing of issues already finally determined as between the applicant and HPW, the agency now responsible for relevant documents and for prosecuting a case in relation to same in this external review. I acknowledge that there are not a large number of pages of this kind in this review. Nevertheless, I consider that revisiting them again now would be vexatious and oppressive to OIC, by requiring it to expend finite resources reconsidering the same information and issues that have already been determined and resolved – resources that could be directed toward other external reviews, or meeting other statutory obligations with which OIC is charged. Revisiting relevant issues would also be unfair to HPW, by necessitating that it deal again in this review with matters resolved in review no. 310671. Finally, re-considering the Repeat Information would be unfair to those other members of the community seeking to avail themselves of OIC's limited, and publicly-funded, resources.
29. For these reasons, I decide not to deal with, or not to further deal with, the applicant's application for external review under section 94(1)(a) of the RTI Act, insofar as it seeks to revisit the Repeat Information.

Decision not to further deal with application as it concerns 'Same Documents'

30. During OIC's original external review, Communities advised OIC that further searches had located the Further Files. Also, as noted above, HPW identified additional pages during this review on remittal.
31. I have examined copies of the Further Files and the additional pages located by HPW. I am satisfied that many of them are the same pages identified by Communities in its initial

²² [27].

²³ Which would defeat the purpose of my invoking section 94(1)(a), and occasion the very prejudice to OIC and others my decision in this regard is intended to avoid.

²⁴ *Underwood (No. 1)*, at [28], applying *Woodyat and Minister for Corrective Services* (1995) 2 QAR 383 and *Beanland and Department of Justice and Attorney-General* (1995) 3 QAR 26.

processing of the applicant's access application and dealt with in its decision, or in the case of 'File07' (supplied by Communities during OIC's original review), the same pages as pages 1184-1192 identified by HPW during this review on remittal. This is evidenced by indicia such as identical handwritten annotations, with Communities apparently having merely stamped an RTI 'watermark' on each duplicated page before re-supplying same to OIC. Each of these documents – the **Same Documents** – has therefore either been released to the applicant or otherwise forms part of the information in issue dealt with elsewhere in these reasons

32. Dealing further with the Same Documents would entail the repetition of a considerable amount of work already undertaken by OIC and HPW in this review, a significant exercise that would result only in the applicant either being granted access to identical information already released, or, conversely, refused access to identical information. In the circumstances, and contrary to the applicant's 28 June 2016 submissions, I consider that dealing further with the applicant's review application as it concerns the Same Documents would achieve no outcome for the applicant other than that she has either already obtained, or will obtain through this decision – a situation that would be both frivolous,²⁵ and oppressive to OIC and HPW, causing each 'serious and unjustified trouble'²⁶ sufficient to amount to vexation.
33. Accordingly, to the extent the applicant's external review application concerns the Same Documents,²⁷ I consider it both frivolous and vexatious. I therefore intend not to further deal with that part of her application under section 94(1)(a) of the RTI Act, and the pages to which it relates. I should make it abundantly clear that my adopting this course of action causes the applicant no disadvantage, but conserves the resources of both OIC and HPW, allowing them to be deployed elsewhere in service of the public.

Out of scope and irrelevant information

34. A number of documents post-date the applicant's access application. These are therefore outside the scope of that application, and may be excluded from consideration.²⁸
35. Similarly, parts of certain pages contain information post-dating the applicant's access application. Under section 73(2) of the RTI Act, an agency may give access to a document with irrelevant information deleted, if it considers from the terms of the application or after consultation with the applicant, that the applicant would accept the copy and it is reasonably practicable to give access to the copy. The agency is entitled to make the decision to delete irrelevant information based on the access application itself (i.e., without consulting the applicant) where the information clearly falls outside the scope of the access application.²⁹
36. Information post-dating an access application plainly falls outside the temporal scope of that application. Accordingly, as pertinent information in this review relates to a period of time other than that which is relevant to the access application, it may be deleted as irrelevant information under section 73(2) of the RTI Act.
37. Additionally, in an annexure to her access application, the applicant stated that she sought access to information '*...excepting that already provided under previous applications IP0029 of 22 July 2009 and IP0029/R0247 of 27 November 2009...*'.

²⁵ Adopting the ordinary meaning of the word, which includes 'of little or no weight, worth or importance, not worthy of serious notice...; characterised by lack of seriousness or sense': *Mudie v Gainriver*, at [35].

²⁶ Paraphrasing Deane J's interpretation of this term as explained in *Oceanic Sun Line Special Shipping Co Inc v Fay* (1988) 165 CLR 197.

²⁷ Identified in Appendix 2.

²⁸ Section 27(1) of the RTI Act provides that an access application only applies to documents in existence on the day the application is received.

²⁹ *8U3AMG and Department of Communities* (Unreported, Queensland Information Commissioner, 15 September 2011) at [15]; *Underwood*, note 17.

38. A considerable number of pages were previously released to the applicant pursuant to these earlier access applications.³⁰ Accordingly, as information '*already provided under*' applications IP0029 and/or R0247, these pages³¹ fall within the exception expressly specified by the applicant in her access application. As she explicitly stated that she was not seeking access to these pages, they are therefore outside the scope of her access application and may be excluded from consideration in this external review.
39. Finally, there is a deal of information that is entirely unrelated to the subject of the applicant's access application, and thus does not fall within the terms of that application. It, too, is outside the scope of the application and of this external review, and where it appears within an otherwise relevant document, comprises clearly irrelevant information which may be deleted in accordance with the principles discussed above.
40. The applicant contests deletion of information on the ground of irrelevance, partly on the basis she has not been consulted, and partly, as best as I can understand her submissions, because she cannot be satisfied that specific information is irrelevant (or out of scope).³²
41. In relation to the first point, and explained above, if a view as to the application of section 73(2) of the RTI Act can be formed based on the terms of the application, consultation with an applicant is not required. That is the situation in this case.
42. In relation to the second, whether the applicant is satisfied as to irrelevance, scope, or, indeed, any other matter the subject of these reasons is immaterial – it is sufficient that I, as the delegate of the Information Commissioner charged with decision-making functions under the RTI Act, am so satisfied.

Exempt Information

43. The RTI Act gives people a right to access documents of government agencies.³³ This right is subject to other provisions of the RTI Act, including grounds on which access may be refused. Access may be refused to information, to the extent the information comprises 'exempt information'.³⁴ 'Exempt information' includes information that would be privileged from production in a legal proceeding on the ground of legal professional privilege.³⁵

Legal Professional Privilege

44. Legal professional privilege attaches to confidential communications between a lawyer and client made for the dominant purpose of seeking or giving legal advice or professional legal assistance, or preparing for, or for use in or in relation to, existing or reasonably anticipated legal proceedings.³⁶

³⁰ See copies of CDs of information previously released to the applicant by Communities, as forwarded by the applicant to OIC under cover of her application for external review.

³¹ Identified in the schedule at Appendix 2 to these reasons, together with earlier Communities file and page references.

³² Submissions dated 28 June 2016.

³³ Section 23 of the RTI Act.

³⁴ Section 47(3)(a) of the RTI Act.

³⁵ Section 48 and schedule 3, section 7 of the RTI Act.

³⁶ *Esso Australia Resources Ltd v Commission of Taxation* 201 CLR 49; *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543 at 552. An analysis of the principles of legal professional privilege – particularly as they apply in the context of the RTI Act – can be found at [18]-[26] of *Underwood*.

45. The privilege extends to copies of unprivileged documents made for the dominant purpose of obtaining legal advice³⁷ and to internal communications repeating legal advice, whether verbatim or in substance.³⁸
46. Relevant information – the ‘**Legal Information**’ – is noted in the schedule forming Appendix 2 to these reasons. It comprises communications between Communities officers and Communities’ legal service providers as employed by HPW, made for the purposes of conveying instructions and requesting or providing legal advice, and internal departmental communications repeating or summarising the substance of such communications.
47. Having reviewed the Legal Information, I am satisfied that it was created for the dominant purpose of obtaining professional legal assistance from independent legal advisors, or for conveying that assistance. There is nothing before me to suggest that it is anything other than confidential as against the applicant. It therefore attracts legal professional privilege and is thus exempt information to which access may be refused.
48. The applicant has contested the existence of legal professional privilege, submitting that at the time she lodged her access application, ‘*I did not know of any legal proceedings – there is no valid reason to claim legal privilege.*’³⁹ Obtaining material for use in legal proceedings is but one of two circumstances in which communications may attract privilege. The other, as the statement of principle set out in paragraph 44 makes clear (and as was explained to the applicant in my letter dated 31 May 2016), is where communications are made for the dominant purpose of seeking or conveying legal advice. It is the latter that is relevant in this case; as explained above, I am satisfied that relevant information was created for the dominant purpose of requesting or providing professional legal assistance.

Contrary to public interest information

Relevant law

49. It is Parliament’s intention that access should be given to a document unless giving access would, on balance, be contrary to the public interest.⁴⁰ The term ‘public interest’ refers to considerations affecting the good order and functioning of the community and government affairs, for the wellbeing of citizens generally. This means that ordinarily, a public interest consideration is one which is common to all members of the community, or a substantial segment of the community, as distinct from matters that concern purely private or personal interests. However, there are some recognised public interest considerations that may apply for the benefit of a particular individual.
50. In deciding whether disclosure would, on balance, be contrary to the public interest, the RTI Act requires a decision-maker to:
- identify any irrelevant factors and disregard them;
 - identify relevant public interest factors favouring disclosure and nondisclosure;
 - balance the relevant factors favouring disclosure and nondisclosure; and
 - decide whether disclosing the information would, on balance, be contrary to the public interest.⁴¹
51. Schedule 4 of the RTI Act contains non-exhaustive lists of various factors that may be relevant in determining the balance of the public interest.

³⁷ *Australian Federal Police v Propend Finance Pty Ltd* (1997) 188 CLR 501.

³⁸ *Brambles Holdings v Trade Practices Commission* (No. 3) (1981) 58 FLR 452 at 458-459; *Komacha v Orange City Council* (Supreme Court of New South Wales, Rath J, 30 August 1979, unreported).

³⁹ Submissions dated 28 June 2016.

⁴⁰ Section 44(1) of the RTI Act. Where disclosure would, on balance, be contrary to the public interest, access may be refused under sections 47(3)(b) and 49 of the RTI Act.

⁴¹ Section 49(3) of the RTI Act.

52. There are three main categories of contrary to public interest information (**CTPI Information**) in issue, as follows:
- Category 1: Public servant mobile telephone numbers;
 - Category 2: Body corporate and private sector employee information (including several subcategories, described further below); and
 - Category 3: Third party information.⁴²
53. In addition to these categories, the information in issue includes:
- small segments of information appearing on pages 200, 205 and 1167, concerning a public officer's domestic affairs and another's work pattern arrangements; and
 - the residential address of the vendors from whom the Queensland Government purchased the unit the subject of the applicant's access application.
54. I address these latter segments, and Categories 1-3 of the CTPI Information, below.

Consideration

55. I can identify no applicable irrelevant factors, and I have taken none into account in making my decision. I will now consider whether the balance of the public interest favours disclosure or nondisclosure of the CTPI Information.

Category 1: Mobile telephone numbers

56. Some of the information in issue comprises the mobile telephone numbers of public servants. The only consideration that I can identify favouring disclosure of this information is the general public interest in promoting access to government-held information.⁴³ Beyond this, I am unable to identify any further factors telling in favour of release – I cannot see how disclosure of such limited and particular personal contact details could, for example, promote open discussion of public affairs,⁴⁴ or contribute to positive and informed debate on important issues or matters of serious interest.⁴⁵
57. The applicant has made various contentions as to why information generally should be disclosed to her, including that she was being denied:
- *'the right to have the information amended...to have notations made to the records where they are inaccurate, misleading and/or irrelevant'*; and
 - *the 'right to know the details of seemingly fabricated information ie perpetuating and compounding one's persecution'*.⁴⁶
58. The applicant made almost identical submissions to these in both *Underwood and Minister* and *Underwood (No. 1)*. To paraphrase what the RTI Commissioner said in those cases, insofar as the submissions canvassed in the above paragraph are relevant, they would appear to be meaningfully applicable only to the Category 3 information. I have addressed them in that context below. For present purposes, it is sufficient to note that as regards the Category 1 information, there is no evidence before me to suggest that any of the mobile telephone numbers are incorrect⁴⁷ or in any way 'fabricated', and

⁴² The schedule at Appendix 2 references CTPI Information according to these categories.

⁴³ Implicit in, for example, the objects of the RTI Act.

⁴⁴ Schedule 4, part 2, item 1 of the RTI Act.

⁴⁵ Schedule 4, part 2, item 2 of the RTI Act.

⁴⁶ See, for example, page 13 of the applicant's 28 June 2016 submissions.

⁴⁷ And thus no basis on which to reasonably conclude that their disclosure would reveal that they were incorrect, out of date, misleading etc., a factor favouring disclosure: schedule 4, part 2, item 12 of the RTI Act. I also note that even if this Category 1 information was incorrect, refusing the applicant access to it does not 'deny' her the opportunity to have it amended (see paragraph 57), as the right to amend information contained in section 41 of the *Information Privacy Act 2009* (Qld) only applies to a document to the extent it contains the individual's personal information. These numbers are not the applicant's personal information.

I cannot see how mere contact numbers could contribute to alleged '*perpetuating and compounding* [of] *one's persecution*' in any way, least of all so as to merit disclosure.

59. As for factors favouring nondisclosure of public servants' mobile telephone numbers, the RTI Commissioner analysed relevant considerations in dealing with identical information in *Underwood and Minister*:

66. *A factor favouring nondisclosure arises where disclosure of information could reasonably be expected to prejudice the protection of an individual's right to privacy. OIC has previously found that disclosure of the mobile telephone numbers of public officers could reasonably be expected to lead to this prejudice. This is because such information allows officers to be contacted directly and outside of work hours. As the Assistant Information Commissioner has noted:*

I acknowledge that agency employees are provided with mobile telephones to perform work associated with their employment. However, I also consider that a mobile telephone number which allows an individual to be contacted directly and potentially outside of working hours, falls outside the realm of routine work information and attracts a certain level of privacy.

67. *I agree. As I have noted, disclosure of mobile telephone numbers permits potential contact with a public officer when off duty and/or engaged in private activity, thus giving rise to a reasonable expectation of intrusion into to the officer's private life or 'personal sphere'. (Footnotes omitted.⁴⁸)*

60. The reasoning in *Underwood and Minister* is apposite in this case. I am satisfied that disclosure of public servants' mobile telephone numbers could reasonably be expected to prejudice the protection of associated individuals' right to privacy. This gives rise to a factor favouring nondisclosure of this information.⁴⁹
61. In the interests of completeness, I should note that the applicant appears to contest the application of this nondisclosure factor, arguing that '*[p]ublic service officers and/or others are not entitled to claim privacy when my privacy is not considered*'.⁵⁰ From her submissions, it appears the applicant may have taken umbrage at circulation of issues concerning her public tenancy amongst various officials with responsibility for community and public housing.⁵¹ There is no objective material before me, however, to suggest that such activity was anything other than ordinary, everyday administrative practice – certainly, outside the applicant's various assertions and allegations, there is nothing in the information before me to suggest her 'privacy' has not been 'considered.'
62. In any event, the applicant's contentions are strictly irrelevant to an application of the privacy nondisclosure factor. The factor arises for consideration in balancing the public interest where, as noted, disclosure of specific information could reasonably be expected to prejudice protection of an individual's right to privacy – its operation is not contingent on another's privacy having also been given due regard.
63. It remains then to balance relevant factors against one another. As noted in paragraph 56, I recognise the general public interest in promoting access to government-held

⁴⁸ The OIC decision noted at [66] of the RTI Commissioner's decision in *Underwood and Minister* is *Kiepe and the University of Queensland* (Unreported, Queensland Information Commissioner, 1 August 2012), specifically [18]-[21]. The nested passage quoting the Assistant Information Commissioner appears at paragraph [20] of *Kiepe*.

⁴⁹ Schedule 4, part 3, item 3 of the RTI Act. The concept of '*privacy*' as used in this factor is not defined in the RTI Act. It can, however, be viewed as the right of an individual to preserve their personal sphere free from interference from others: see *Marshall and Department of Police* (Unreported, Queensland Information Commissioner, 25 February 2011) at [27] paraphrasing the Australian Law Reform Commission's definition of the concept in '*For your information: Australian Privacy Law and Practice*' Australian Law Reform Commission Report No. 108 released 11 August 2008, at paragraph 1.56.

⁵⁰ Submissions dated 28 June 2016, page 13.

⁵¹ The applicant stating that her '*privacy has not in any way...been considered as seen with seemingly fabricated documentation being sent and/or forwarded to all and sundry...*': as above.

information. There are, however, no broader accountability or transparency considerations to be advanced by disclosure of the public servant mobile numbers in issue. In the circumstances I consider this general consideration favouring disclosure warrants only minimum weight.

64. Weighing against disclosure is the public interest in avoiding prejudice to the protection of an individual's right to privacy. There is a clear public interest in ensuring that government respects personal privacy, including the privacy of its employees. I accord this consideration significant weight.
65. Balancing relevant factors against one another, I consider the substantial public interest in safeguarding individual privacy outweighs the general public interest in promoting access to government-held information. In this regard, I note that government is the custodian of a mass of information relating to the community, and the general public interest in promoting access to information it holds will often conflict with and, generally, yield to specific public interests, such as the public interest in protecting personal privacy. This is such a case.
66. Disclosure of the public servant mobile numbers in issue would, on balance, be contrary to the public interest.⁵² For the reasons explained above, access may be refused to the Category 1 information.⁵³

Category 2: Body corporate information

67. The Category 2 information includes various documents containing information relating to Communities' proposals for the unit in which the applicant was resident, and the management of the body corporate of the complex to which that unit belonged. Some of these documents contain segments of CTPI Information, generally:
- a) names and identifying particulars of private lot owners/occupants and information disclosing their dealings with their properties, such as the manner in which those owners voted on body corporate matters;
 - b) financial information concerning amounts payable by lot owners and the body corporate representing those owners; and
 - c) names and/or personal information⁵⁴ of:
 - employees of the strata title management company engaged to manage the body corporate and its contractors; and
 - employees of other private entities (particularly as appearing in the Additional Documents).
68. I will address each of the above sub-categories in turn.

(a)-(b) Lot owner names/financial information

69. I have carefully reviewed the applicant's submissions, and this information itself. The only factor favouring disclosure of this information that I can identify is the general public interest in promoting community access to government-held information.⁵⁵ Given the nature of this information – genuinely private information concerning the personal and financial affairs of members of the public – this sole consideration favouring disclosure deserves only marginal weight.

⁵² In accordance with the balancing exercise prescribed in section 49 of the RTI Act.

⁵³ Under section 47(3)(b) of the RTI Act.

⁵⁴ Including mobile telephone numbers.

⁵⁵ Noting, in view of the applicant's generalised submissions as canvassed in paragraph 57 above, that there is nothing before me to suggest that any of this purely factual information is 'fabricated', and/or incorrect, out of date, misleading etc., and therefore no basis on which to reasonably conclude that its disclosure would reveal same so as to enliven schedule 4, part 2, item 12 of the RTI Act. I again note that even if this information was incorrect, refusing the applicant access to it does not deny her any opportunity to have it amended (see paragraph 57), for the reasons explained at note 47.

70. Telling against disclosure is the fact that this information comprises the personal information of individual proprietors of units in the relevant complex,⁵⁶ and/or information disclosure of which could reasonably be expected to prejudice the protection of those proprietors' right to privacy.⁵⁷ I consider that matters concerning an individual's ownership of residential property, their intentions as to the management of such property, and the financial liabilities attending ownership, comprise information falling within their 'personal sphere'.⁵⁸
71. In the circumstances, the personal information public interest harm factor and/or the privacy nondisclosure factor weigh against disclosure of this information. Each deserves substantial weight. As I can identify only one factor favouring disclosure – of negligible weight – I am satisfied that disclosure of relevant information would, on balance, be contrary to the public interest. Access to this information may therefore be refused.

(c) Employee names/personal information

72. As for the employee names (and occasional segments of related information), OIC has previously found that the fact that an individual works for a private sector business is their personal information, giving rise to the public interest harm factor favouring nondisclosure and the related public interest nondisclosure factor intended to avoid prejudice to the protection of individual privacy.⁵⁹ Applying that earlier reasoning, I am satisfied that each of these factors applies to the equivalent information in issue in the present case.
73. I am also satisfied that the mobile telephone numbers of private individuals appearing on page 935 and Additional Page 2 attract the operation of each of these factors weighing against disclosure. Mobile numbers in my view comprise personal information, as by calling them, it would be reasonably possible to ascertain the identity of the individual phone holder associated with each number. Further, I am satisfied that disclosure of this information could reasonably be expected to prejudice protection of the phone holder's right to privacy, giving rise to a public interest factor favouring nondisclosure.⁶⁰
74. As regards the weight to be accorded these considerations, there is, in my view, a manifest and self-evident public interest in ensuring that government protects personal information and the individual privacy of private citizens. Accordingly, I am satisfied that each of the relevant factors attracts substantial weight.
75. The only factor favouring disclosure of this sub-category of information that I can identify is the general public interest in advancing access to government-held information, noting that the applicant has put nothing before me – either in her original submissions or during this review on remittal – identifying any others meriting genuine consideration.⁶¹ That consideration alone is, in my view, insufficient to displace the privacy interest attaching to this information and the public interest in safeguarding personal information held by government. Accordingly, it is my view that disclosure of relevant names and related

⁵⁶ The RTI Act presumes that disclosure of personal information could reasonably be expected to give rise to a public interest harm telling against disclosure: schedule 4, part 4, section 6 of the RTI Act. '*Personal information*' is '*information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*': see section 10 and schedule 6 of the RTI Act, and section 12 of the *Information Privacy Act 2009* (Qld). Relevant information here comprises information about individuals and whose identity is apparent or could reasonably be ascertained from the information.

⁵⁷ Schedule 4, part 3, item 3 of the RTI Act.

⁵⁸ See note 49.

⁵⁹ *Underwood*, at [67].

⁶⁰ Schedule 4, part 3, item 3 of the RTI Act. I am satisfied that contact details such as individuals' mobile phone numbers fall within their 'personal sphere' (note 49).

⁶¹ Again noting that there is no objective material before me to suggest relevant information is fabricated and/or in any way incorrect, out of date, misleading etc. As regards possible public interest considerations more generally, I note that it is difficult to see how disclosure of the names of individuals employed outside the public sector could, for example, enhance government accountability or official transparency.

information would, on balance, be contrary to the public interest, and access to this information may be refused.

Category 3: Third party information

76. A number of pages contain information disclosure of which would identify persons other than the applicant, in a context concerning those persons' complaints to and/or interactions with Communities (or interactions proposed by Communities), including information describing individual attitudes, opinions, and personal and financial intentions. As identifying information,⁶² this information comprises personal information, release of which would occasion a public interest harm.⁶³ A private citizen's dealings with a government agency concerns a central aspect of their 'personal sphere',⁶⁴ and therefore I am further satisfied that, by linking identifiable individuals with such dealings and interactions, disclosure of the Category 3 information could reasonably be expected to prejudice protection of the third parties' right to privacy.⁶⁵
77. I recognise the public interest in disclosing information that may assist to ensure public agencies operate transparently and accountably, and acknowledge that disclosure of these segments may allow the applicant to be fully apprised of issues concerning her tenancy, and Communities' management of that tenancy. These considerations enliven the public interest factors favouring disclosure set out in schedule 4, part 2, item 1 and 11 of the RTI Act.
78. I consider, however, that in this case applicable public interests have been adequately served by disclosure to the applicant of information concerning her tenancy, and that she has been provided with sufficient information (including via disclosure made during the course of this review) to allow her to understand associated issues and Communities handling of them. Relevant pro-disclosure factors therefore warrant only moderate weight.
79. I also note that, as information concerning the applicant's tenancy, some of this information arguably also comprises her personal information (giving rise to the factor favouring disclosure prescribed in schedule 4, part 2, item 7 of the RTI Act). It is not possible, however, to separate this personal information from the personal information of others. Disclosing it would therefore require disclosure of the personal information of a person other than the applicant, and would prejudice protection of an individual's right to privacy. In the circumstances of this case, my view is that the public interest in safeguarding personal information and privacy of third parties should be preferred to that favouring disclosure to a person of their own personal information. In short, I am not persuaded that disclosure of the Category 3 information would materially advance the pro-disclosure public interest factors I have identified above; certainly, not to an extent sufficient to justify disclosure of the personal information of which this information is comprised.
80. As I have noted above, to the extent the applicant's submissions regarding the public interest can be meaningfully applied to the information in issue in this review, they appear to have most purchase as regards the Category 3 information. The essence of her submissions is reflected in the extracts set out in paragraph 57 above; ie that information is '*fabricated*', and '*inaccurate, incomplete, out of date or misleading*'.
81. A factor favouring disclosure will arise for balancing where disclosure of information could reasonably be expected to reveal that the information is incorrect, out of date,

⁶² Or information disclosing a relationship or proximity to the applicant which could reasonably be expected to identify other individuals.

⁶³ Schedule 4, part 4, section 6 of the RTI Act.

⁶⁴ *OP5BNI and Department of National Parks, Recreation, Sport and Racing* (Unreported, Queensland Information Commissioner, 12 September 2013) at [45].

⁶⁵ Remembering that this is a factor favouring nondisclosure: schedule 4, part 3, item 3 of the RTI Act.

misleading, gratuitous, unfairly subjective or irrelevant.⁶⁶ There is, however, nothing before me to suggest that relevant information is inaccurate, incomplete etc. Much of it is merely factual matter – such as names – which clearly present as accurate. As for more substantive ‘complaint’ detail, OIC has previously found that information of this kind:

... is by its very nature, an individual’s particular version of events which is shaped by factors including the individual’s memory and subjective impressions.

*In my view, this inherent subjectivity does not necessarily mean that the resulting account or statement is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant. Rather, it means that complaint information comprises a personal interpretation of relevant events, which an investigator must balance against other (often competing) statements and evidence in reaching a conclusion in a particular case.*⁶⁷

82. This analysis is relevant in this case. Applying it, I do not consider that the relevant pro-disclosure factor arises for consideration in this case.⁶⁸
83. Nor does this appear to be a case in which procedural fairness considerations might arise to favour disclosure. The substance of any matters potentially adverse to the applicant have either been disclosed pursuant to related RTI access applications, or by HPW in the course of this review. I note the applicant’s submission that she is ‘*being denied the right to have my side of the neighbourhood dispute placed on record.*’ It is not, in my view, necessary for the applicant to access third party personal information (nor any other information to which I have decided access may be refused) in order for her to put her ‘side’ of the dispute; indeed, the voluminous amount of correspondence lodged by her with Communities/HPW in relation to relevant ‘neighbourhood’ issues⁶⁹ suggests she has not only enjoyed such a right, but exercised it vigorously.
84. In the circumstances, I consider that the public interest in protecting privacy and safeguarding personal information should be preferred to any considerations favouring disclosure of the Category 3 information. As the RTI Commissioner observed in refusing access to analogous information in *Underwood (No. 1)* (footnotes omitted):⁷⁰

Members of the public are generally entitled to expect that personal information collected from them by government agencies will be handled appropriately, and not subject to routine and unconditional disclosure to others. Safeguarding individual privacy and avoiding public interest harm by protecting personal information are public interest considerations warranting relatively substantial weight, and which outweigh any considerations favouring disclosure in this case.

85. Disclosure of the Category 3 information would, on balance, be contrary to the public interest. Access to this information may therefore be refused.

⁶⁶ Schedule 4, part 2, item 12 of the RTI Act.

⁶⁷ *Matthews and Gold Coast City Council* (Unreported, Queensland Information Commissioner, 23 June 2011) at [17]-[18].

⁶⁸ And nor, accordingly, do I consider that the applicant has been denied any right of ‘correction’ or amendment. Some of this information is plainly not the applicant’s personal information (and thus not amenable to amendment on application by her – see note 47), while none of it is, as explained in this paragraph, incorrect etc, which is a ground for refusing a request for amendment: section 72(1)(a)(i) of the *Information Privacy Act 2009* (Qld).

⁶⁹ As dealt with in the course of this review.

⁷⁰ At [76].

Miscellaneous public servant personal information

86. As noted in paragraph 53, in addition to the three categories discussed above, the CTPI Information in issue includes also small segments of information appearing on pages 200, 205 and 1167, concerning a public officer's domestic affairs and another's work pattern arrangements. Disclosure of any of these segments would cause a public interest harm by disclosing the personal information⁷¹ of each officer, and prejudice protection of the officers' right to privacy.⁷² Public servants are entitled to have their personal information protected and their privacy respected, particularly in relation to information about their personal affairs rather than public duties. Each of these considerations favouring nondisclosure attract substantial weight
87. Once again, in favour of disclosure I recognise the general public interest in promoting access to government-held information. This consideration, however, warrants only negligible weight, given the personal nature of these segments of information, and I can identify no other factors favouring disclosure of these segments to the applicant.⁷³ Applicable privacy interests justifying nondisclosure are therefore not displaced by any considerations in favour of release. In the circumstances I am satisfied that disclosure of these segments would, on balance, be contrary to the public interest. Access to this information may therefore be refused.

Vendors' residential address

88. Additional Page 4 contains the residential address of the private individuals from whom the Queensland Government purchased the unit the subject of the applicant's access application. Once again, other than the general public interest in advancing access to government-held information, I can identify no considerations favouring disclosure to the applicant of this information. I am unable to see how the disclosure of a private citizen's residential address would, for example, enhance official accountability or the transparency of government operations.
89. Further, I can identify nothing in any of the applicant's submissions which would support a case for release to her of this information. As regards the submissions summarised in paragraph 57, for example, I note that there is nothing before me to cause me to question the veracity of this information, and, as factual information concerning individuals other than the applicant, it is not amenable to amendment on application by her.
90. Weighing against any considerations favouring disclosure is the fact that release of this personal information would occasion a public interest harm.⁷⁴ Additionally, by revealing the residential address of private individuals, disclosure could reasonably be expected to prejudice the protection of those individuals' right to privacy.⁷⁵ Given the nature of this information – personal information in the possession of government as a consequence of its participation in the residential property market – I consider the general public interest favouring disclosure identified above should be given limited weight only. Any

⁷¹ Schedule 4, part 4, section 6 of the RTI Act – I am satisfied that relevant segments come within the definition of personal information set out above at note 56, given that they are about *'individual[s] whose identity is apparent, or can reasonably be ascertained, from the information'*.

⁷² Schedule 4, part 3, item 3 of the RTI Act. I am satisfied that domestic and work pattern arrangements of the kind described in these segments fall within an individual's 'personal sphere': see note 49.

⁷³ Noting that I cannot see how any of the submissions put by the applicant, insofar as they can be read as arguments as to why disclosure of information would advance the public interest, could be meaningfully applied to domestic and work pattern information concerning other individuals. There is no evidence before me to suggest that these segments are 'fabricated' or 'incorrect', and nothing whatsoever to explain how information concerning the personal affairs of public servants could be said to be *'perpetuating and compounding one's persecution'*, as asserted by the applicant (see paragraph 57 above). Further, there is no basis on which it might be said that the applicant is being 'denied' the right to have this information amended, given that this information is plainly not her personal information and thus not information that might be amenable to amendment on application by the applicant: note 47.

⁷⁴ Schedule 4, part 4, section 6 of the RTI Act.

⁷⁵ Schedule 4, part 3, item 3 of the RTI Act.

considerations favouring disclosure should be subordinated to the strong public interest in protecting personal information and safeguarding individual privacy.

91. Disclosure of the vendors' address would, on balance, be contrary to the public interest and access to this segment may therefore be refused.

CTPI Information – concluding comments

92. In reaching the above findings in relation to the CTPI Information, I acknowledge that the applicant may be aware of a considerable amount of information concerning identities and events to which the Category 3 and, indeed, other categories of CTPI Information relate – as a consequence, for example, of information released to her pursuant to various RTI access applications and of her involvement in events to which information may pertain. In these circumstances, arguably the privacy interests attaching to some of the personal information embodied in the CTPI Information may not be of the same magnitude as might ordinarily be the case.
93. Nevertheless, members of the community are, as previously noted, entitled to expect that the personal information they convey to a government agency will not be subject to unconditional disclosure to others. In the circumstances, I remain satisfied that the factors favouring nondisclosure discussed retain sufficient weight to justify refusal of access in this case.

Sufficiency of search contentions and miscellaneous submissions

94. The Information Commissioner's external review functions include investigating and reviewing whether agencies have taken reasonable steps to identify and locate documents applied for by applicants.⁷⁶ In summary terms, where all reasonable steps have been taken, access may be refused to documents, on the basis they are nonexistent or unlocatable.⁷⁷
95. In an annexure to her application for external review, the applicant puts various statements, questions and assertions suggesting that Communities/HPW have failed to locate and deal with all relevant documents.⁷⁸ I had considerable difficulty comprehending these particular submissions, which are repetitive, convoluted and in parts contradictory – and in no way clarified by the applicant's submissions made during the course of this review.
96. The applicant in this annexure repeatedly asserts, for example, that particular email chains '*cannot be traced to a conclusion – ie establish the end recipient and whose email box it has been printed from*'. My review of relevant material suggests the contrary – emails released to her as pages 'R0602 File01 pages 29-31', for example,⁷⁹ appear to comprise a complete chain of several emails, printed in their entirety – as evidenced by the text '*Page 1/2/3 of 3*' (as relevant) appearing in the top right corner of each page. The officer from whose email account the chain was printed, meanwhile, is plainly stated at the top left of page 29, the first page of this chain – a fact the applicant expressly notes at a later point in this submission, stating '*Printed from email of [officer's name]*'. I can identify nothing in this material tending to indicate that any additional relevant documents exist in any agency's possession or under its control.

⁷⁶ Section 130(2) of the RTI Act.

⁷⁷ In accordance with sections 47(3)(e) and 52(1) of the RTI Act.

⁷⁸ The principles applicable to sufficiency of search issues were explained in OIC's decision in *PDE and The University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009), and recently re-stated in *Gapsa and Public Service Commission* [2016] QICmr 6 (11 February 2016), at paragraphs [12]-[15] (**Gapsa**). For present purposes, it is sufficient to note that in the context of this case, relevant principles call me to consider whether agency search efforts have been sufficient – whether it has taken all reasonable steps to locate requested information.

⁷⁹ These being pages cited by the applicant.

97. The applicant also queries⁸⁰ *'what information is attached?'* to a particular email, a question apparently prompted by the statement in that message reading '[p]lease see *attached information*'. Insofar as this query might be read as a contention that Communities and/or HPW as its successor has failed to identify and deal with the 'attached' information, it cannot be sustained: the 'attached' information comprises information dealt with elsewhere in these reasons, as information to which access may be refused. No issue as to search adequacy arises from this reference.
98. Elsewhere in her review application,⁸¹ and again in her 28 June 2016 submissions,⁸² the applicant claims that there has been an 'insufficiency of search,' levelling various assertions as to 'missing' documents. An applicant asserting the existence of missing documents bears responsibility for establishing that reasonable grounds exist to suspect the existence of missing documents.⁸³ The applicant has, however, made no attempt to explain or substantiate her assertions, and I can see nothing on the face of the information in issue itself that points toward the existence of additional relevant documents.
99. I can, then, identify no objective evidence pointing to the existence of additional relevant documents. In any event, even if such evidence existed, I consider that all reasonable steps to locate requested information have been taken. Extensive searches for relevant documents were conducted during the initial processing of the applicant's access application. Further searches were conducted by Communities during the original external review, and records of both series of searches supplied to OIC during that review.⁸⁴ I have reviewed these search records, which certify the performance of extensive and appropriately-targeted searches. I am unable to identify any additional lines of enquiry the respondent agency in this matter might now be reasonably requested to perform.
100. In the circumstances, I consider that all reasonable steps have been taken to locate relevant documents. Access may therefore be refused to any additional information, on the basis that it is nonexistent or unlocatable.⁸⁵

Other questions raised in review application

101. The applicant's external review application poses various questions. As I advised the applicant in my letter dated 31 May 2016, the purpose of the RTI Act is to provide applicants with access to identifiable documents – not to allow interrogation of agencies about the contents or meanings of documents, nor to permit an applicant to ask general questions of agencies about matters that might be of interest or concern to that applicant. Accordingly, to the extent the review application raises questions of this kind, it lacks substance, and I decide not to further deal with it.⁸⁶

⁸⁰ Page 9 of the annexure to the applicant's external review application.

⁸¹ Paragraph 16, page 19 of the annexure to the applicant's external review application.

⁸² See paragraph 16 on page 14 of these submissions.

⁸³ *Gapsa*, [15].

⁸⁴ See Communities' letter to OIC dated 16 March 2011, together with relevant enclosures.

⁸⁵ Section 47(3)(e) of the RTI Act.

⁸⁶ Under section 94(1)(a) of the RTI Act.

Request for duplicate copies of emails

102. Finally, the applicant contends that by not identifying and dealing with all iterations of a given email – ie, as appearing in the accounts or ‘mailboxes’ of the sender and all recipients – HPW has failed to take reasonable steps to identify and deal with relevant documents. On page 2 of the annexure to her review application, for example, the applicant states:

Details to date of all email addresses of recipients of the emails and/or forwarded emails – print outs of all emails received and/or sent together with any archived emails received and/or sent are required – no exceptions.

103. Reasonable search efforts will in my view ordinarily only require an agency to, as was done in this case, locate and deal with a single copy of an email or email chain, not its duplications as may be located in the mailboxes of recipients.⁸⁷ Pursuing further iterations of an email/email chain an instance of which has been identified and dealt with is, in the absence of exceptional circumstances, frivolous.⁸⁸ To the extent the applicant’s external review application seeks to do so in this case, I decide not to further deal with it.⁸⁹

DECISION

104. The decision under review refused access to information on grounds that were not relied upon by HPW in this review on remittal, nor by me in reaching my decision.⁹⁰ Additionally, there is a substantial amount of information dealt with in these reasons that was not addressed in the decision under review. Given this, the appropriate course of action is to set aside the decision under review. In its place, I decide not to deal with, or not to further deal with, the applicant’s application for external review under section 94(1)(a) of the RTI Act, insofar as it seeks to revisit the Repeat Information, relates to the Same Information, seeks answers to questions or concerns repeat iterations of emails. I further find that:

- information which is not relevant to the terms of the access application may be deleted under section 73 of the RTI Act;
- some information falls outside the scope of the access application and this external review; and
- access to other information may be refused under sections 47(3)(a), 47(3)(b) and 47(3)(e) of the RTI Act, in accordance with these reasons for decision.

105. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

L Lynch
Assistant Information Commissioner

Date: 15 September 2016

⁸⁷ Or originator, if the agency has located and dealt with a copy fielded by a recipient. Insofar as the applicant refers to ‘archived’ emails, I also note section 29 of the RTI Act, which provides that ‘an access application, however expressed, for a document does not require an agency or Minister to search for the document from a backup system’.

⁸⁸ ‘Of little or no worth, weight or importance’: *Mudie v Gainriver*, at [35].

⁸⁹ Under section 94(1)(a) of the RTI Act. In this regard, OIC did ask HPW to advise as to whether backups of emails from the relevant date period were even retrievable; HPW informed OIC that backups are retained for 12 months. HPW noted that Communities, the agency responsible for relevant email accounts, may have a different retention policy. Given my view that endeavouring to locate further iterations of an email chain would be frivolous, I declined to pursue any inquiries with Communities in this regard.

⁹⁰ Relevantly, the exemption prescribed in schedule 3, section 10(1)(b) of the RTI Act.

APPENDIX 1**Significant procedural steps**

External review 310531	
Date	Event
13 September 2010	Communities received the access application under the RTI Act.
13 December 2010	Communities made its decision on the application.
17 January 2011	OIC received the application for external review of Communities' decision. This was outside the relevant timeframe for applying for external review.
27 January 2011	Given the length and reasons for the delay, the Right to Information Commissioner exercised the discretion to extend the time in which the applicant may apply for external review. OIC advised the applicant and Communities it had accepted the applicant's application for external review. OIC asked Communities to provide submissions on a number of issues, including information as to searches undertaken in processing the applicant's access application.
2 February 2011	Communities requested an extension of time to provide submissions.
23 February 2011	OIC agreed to extend the timeframe for Communities to provide submissions.
17 March 2011	Communities lodged requested submissions detailing, among other things, searches undertaken, including additional searches carried out following OIC's 27 January 2011 letter and copies of the Further Files identified as a consequence of those latter searches.
25 May 2011	OIC wrote to the applicant conveying an update on the review.
19 June 2011	The applicant lodged submissions in reply to OIC's 25 May 2011 letter.
23 November 2011	OIC issued a preliminary view to the applicant and invited her to provide submissions in support of her case if she did not accept the preliminary view.
8 December 2011	OIC received the applicant's submissions in response to the preliminary view.
9 February 2012	OIC decided not to further deal with the applicant's external review application, finalising external review no. 310531.

External review 100103 (remitted matter 310531)	
Date	Event
23 October 2014	QCAT set aside OIC's decision dated 9 February 2012, and remitted the matter to OIC.
24 December 2014	OIC wrote to HPW, advising that it had reopened review 310531 as review no. 100103. OIC requested that HPW provide submissions.
13 January 2015	OIC wrote to the applicant advising that it had opened file no. 100103 (remitted matter 310531).
22 January, 4 February, 3 March 2015	HPW requested and was granted by OIC extensions of time in which to provide its submissions.

External review 100103 (remitted matter 310531)	
Date	Event
19 March 2015	OIC updated the applicant on the status of the review.
30 April 2016	HPW requested further time in which to provide submissions.
5 May 2015	OIC requested HPW provide an update on the status of its submissions.
7 May 2015	OIC updated the applicant on the status of the review.
13 May 2015	HPW provided the update requested by OIC on 5 May 2015.
14 May 2015	OIC wrote to the applicant, advising of the status of the review and requesting the applicant confirm that she wished to proceed with the review.
25 May 2015	The applicant confirmed she wished to proceed with the review.
29 July 2015	OIC received HPW's submissions.
10 September 2015	OIC updated the applicant on the status of the review.
18 February 2016	OIC issued a preliminary view to HPW as to the status of the information in issue and invited submissions in reply.
8 March 2016	DPW requested further time in which to reply to OIC's 18 February 2016 preliminary view. OIC granted the DPW's request.
6 April 2016	OIC received HPW's reply to OIC's preliminary view. HPW agreed to release some of the information in issue.
7 April 2016	OIC wrote to HPW, clarifying aspects of OIC's 18 February 2016 preliminary view.
12 April 2016	OIC requested HPW arrange for release of some information to the applicant. OIC further requested HPW consider release of some additional information.
13 April 2016	HPW advised it would reply to OIC's 12 April 2016 requests by 14 April 2016.
14 April 2016	OIC updated the applicant on the status of the review.
15 April 2016	HPW provided its reply to OIC's 12 April 2016 requests, clarifying its position in relation to certain segments of information.
19 April 2016	OIC wrote to HPW, confirming HPW's 12 April 2016 position and requesting HPW release information to the applicant.
26-28 April 2016	OIC and HPW negotiated further to confirm information to be released to the applicant.
28 April 2016	HPW confirmed relevant information had been released to the applicant.
31 May 2016	OIC issued a preliminary view to the applicant that OIC intended not to deal further with parts of her external review application, and that access may be refused to other information. OIC invited the applicant to provide submissions in support of her case.
28 June 2016	The applicant lodged submissions in reply to OIC's 31 May 2016 preliminary view.
12 July 2016	OIC wrote to HPW, requesting release of specific segments of information.

External review 100103 (remitted matter 310531)	
Date	Event
14 July 2016	HPW confirmed relevant information discussed in OIC's 12 July 2016 correspondence had already been released by HPW.
20 July 2016	OIC wrote to the applicant, correcting typographical references in OIC's 31 May 2016 correspondence.
25 August 2016	OIC wrote to HPW, requesting, among other things, that it release the bulk of the Additional Pages to the applicant.
30 and 31 August 2016	HPW agreed to release relevant parts of the Additional Pages. OIC wrote to the applicant, advising of this release and conveying a preliminary view as to why access may be refused to parts of the Additional Pages. The applicant was invited to provide any response to this correspondence by 22 September 2016.
6 September 2016	The applicant advised OIC she did not intend to make any further submissions.

APPENDIX 2

Information in issue

Page	Original Communities reference (File R0602)	Decision
2-10	File01: 2-10	Full out of scope: post application (20-22.09.10)
11	File01: 11	Part irrelevant (post application: 17, 20.09.10) Part Contrary to Public Interest (CTPI) (Category 3)
12	File01: 12	Full CTPI (Category 3)
13-17	File01: 13-17	Full out of scope: post application (14, 16-17.09.10)
18	File01: 18	Part irrelevant (post application: 14.09.10)
21	File01: 21	Part irrelevant (post application: 14.09.10)
29-33	File01: 29-33	Part CTPI (Category 3)
35	File01: 35	Part exempt: Legal Professional Privilege (LPP) (2nd and 3rd segments on page) Part CTPI (Category 3) (Balance segments)
36	File01: 36	Part CTPI (Category 3)
38	File01: 38	Part CTPI (Category 3) (1st segment) Part exempt: LPP (2nd segment)
39	File01: 39	Part exempt: LPP (1st and 2nd segments on page) Part CTPI (Category 3) (Balance segments)
40	File01: 40	Part CTPI (Category 3)
43-44	File01: 43-44	Part CTPI (Category 3)
47	File01: 47	Part CTPI (Category 3)
58	File01: 58	Part CTPI (Category 3)
68	File01: 68	Part CTPI (Category 3)
73	File01: 73	Part exempt: LPP (2nd and 3rd segments on page) Part CTPI (Category 3) (Balance segments)
74-77	File01: 74-77	Part CTPI (Category 3)
79	File01: 79	Part exempt: LPP (2nd and 3rd segments on page) Part CTPI (Category 3) (Balance segments)
80	File01: 80	Part CTPI (Category 3)
104-105	File01: 104-105	Part CTPI (Category 3)
118	File01: 118	Part CTPI (Category 3)
120-121	File01: 120-121	Part CTPI (Category 3)
123	File01: 123	Part CTPI (Category 3)
144	File01: 144	Part exempt: LPP (2nd and 3rd segments on page) Part CTPI (Category 3) (Balance segments)
145	File01: 145	Part CTPI (Category 3)
150	File01: 150	Part CTPI (Category 3)
154	File01: 154	Part CTPI (Category 3)
162	File01: 162	Part CTPI (Category 3)
179	File01: 179	Part CTPI (Category 3)
200	File01: 200	Part CTPI (public servant personal information)
205	File01: 205	Part CTPI (public servant personal information)
267-269	File01: 267-269	Part CTPI (Category 3)
271	File01: 271	Part CTPI (Category 3)
273	File01: 273	Full CTPI (Category 3)
333	File01: 333	Part irrelevant (unrelated information)
430-437	File03: 2-9	Full out of scope: post application (20-23 & 25.09.10)
450	File03: 22	Part CTPI (Category 3)
457-463	File03: 29-35	Prior release, not sought by applicant: R0247 File01 additional documents 7-13
466	File03: 38	Full out of scope: post application (14.09.10)
510	File03: 82	Part CTPI (Category 3)

Page	Original Communities reference (File R0602)	Decision
511	File03: 84	Part CTPI (Category 3)
594	File03: 169	Prior release, not sought by applicant: R0247 File02 3
596-603	File03: 171-178	Prior release, not sought by applicant: R0247 File02 5-12
604-608	File03: 179-183	Prior release, not sought by applicant: R0247 File02 13-17
609-625	File03: 184-200	Prior release, not sought by applicant: R0247 File02 18-34
626-627	File03: 201-202	Prior release, not sought by applicant: R0247 File02 35-36
628-633	File03: 203-208	Prior release, not sought by applicant: R0247 File02 37-42
667	File03: 242	Prior release, not sought by applicant: R0247 File02 77
668-701	File03: 243-276	Prior release, not sought by applicant: R0247 File02 43-76
704-705	File05: 3-4	Full out of scope: post application (17 & 20.09.10)
706	File05: 5	Part irrelevant (post application: 17.09.10) Part CTPI (Category 3)
707-711	File05: 6-10	Full out of scope: post application (17.09.10)
712	File05: 11	Part irrelevant (post application: 14.09.10)
715	File05: 14	Part CTPI (Category 3)
717	File05: 16	Full CTPI (Category 3)
718-719	File05: 17-18	Part CTPI (Category 3)
724-726	File05: 23-25	Full exempt: LPP
727-732	File05: 26-31	Full CTPI (Category 3)
733	File 05: 32	Part CTPI (Category 3)
736	File05: 35	Part exempt: LPP (2nd and 3rd segments on page) Part CTPI (Category 3) (Balance segments)
737-738	File05: 36-37	Part CTPI (Category 3)
742-744	File05: 41-43	Part CTPI (Category 3)
747-751	File05: 46-50	Full CTPI (Category 3)
754-755	File05: 53-54	Full exempt: LPP
769	File05: 68	Full CTPI (Category 3)
770	File05: 69	Part exempt: LPP (2nd and 3rd segments on page) Part CTPI (Category 3) (Balance segments)
771-774	File05: 70-73	Part CTPI (Category 3)
777	File05: 76	Part CTPI (Category 3)
813-818	File05: 112-117	Part CTPI (Category 3)
825-826	File05: 124-125	Full CTPI (Category 3)
870	File05: 169	Part irrelevant (unrelated information)
882-883	File05: 181-182	Prior release, not sought by applicant: R0247 File02 121-122
895	File05: 194	Part CTPI (Category 2(c))
896	File05: 195	Part CTPI (Category 2(a) - first segment on page) Part CTPI (Category 2(c) - balance)
898	File05: 197	Part CTPI (Category 2(c))
899	File05: 198	Part CTPI (Category 2(c) - first five segments on page) Part CTPI (Category 2(a) - balance)
901	File05: 200	Part CTPI (Category 2(a))
902	File05: 201	Part CTPI (Category 2(c) - first segment on page) Part CTPI (Category 2(a) - second segment)

Page	Original Communities reference (File R0602)	Decision
903	File05: 202	Part CTPI (Category 2(c) - first two segments on page) Part CTPI (Category 2(a) - balance)
904-905	File05: 203	Part CTPI (Category 2(c))
908	File05: 205	Part CTPI (Category 2(a))
911	File05: 210	Part CTPI (Category 2(a))
923	File05: 222	Part CTPI (Category 2(c))
934-935	File05: 234-235	Part CTPI (Category 2(c))
942	File05: 241	Prior release, not sought by applicant: R0247 File02 78
943	File05: 242	Part CTPI (Category 2(c))
947-949	File05: 246-248	Part CTPI (Category 2(c))
951	File05: 250	Part CTPI (Category 2(c))
953-955	File05: 252-254	Part CTPI (Category 2(c))
961	File05: 260	Part CTPI (Category 2(c))
976-978	File05: 275-277	Part CTPI (Category 2(c))
980	File05: 279	Part CTPI (Category 2(c))
982	File05: 281	Part CTPI (Category 2(c))
984	File05: 283	Part CTPI (Category 2(c))
1000	File05: 299	Part CTPI (Category 2(a))
1004	File05: 303	Part CTPI (Category 2(a))
1023	File05: 323	Part CTPI (Category 2(b))
1034	File05: 333	Part CTPI (Category 2(c))
1042-1043	File05: 341-342	Part CTPI (Category 2(c))
1045	File05:344	Part CTPI (Category 2(a))
1047	File05: 346	Part CTPI (Category 2(a) - first two segments on page) Part CTPI (Category 2(c) - third segment)
1048	File05: 347	Full CTPI (Category 2(a))
1050	File05: 349	Part CTPI (Category 2(c) - first two segments on page) Part CTPI (Category 1 - third segment)
1051	File05: 350	Part CTPI (Category 2(c) - first two segments on page) Part CTPI (Category 1 - third segment)
1052-1053	File05: 351-352	Part CTPI (Category 2(c))
1056-1057	File05: 355-356	Part CTPI (Category 2(c))
1059-1060	File05: 358-359	Part CTPI (Category 2(a))
1063	File05: 364	Part CTPI (Category 2(c))
1071	File05: 370	Part CTPI (Category 2(b))
1078-1087	File05: 377-386	Prior release, not sought by applicant: R0247 File01additional documents 7-16
1088-1094	File05: 387-393	94(1)(a): External review 310671 pages 1130-1136
1097	File04: 2	Full out of scope: post application (16.09.10)
1122	File04: 27	Part exempt: LPP (2nd and 3rd segments on page) Part CTPI (Category 3) (Balance segments)
1123-1124	File04: 28-29	Part CTPI (Category 3)
1125	File04: 30	Full CTPI (Category 3)
1127	File04: 32	Full CTPI (Category 3)
1128	File04: 33	Part exempt: LPP (2nd and 3rd segments on page) Part CTPI (Category 3) (Balance segments)

Page	Original Communities reference (File R0602)	Decision
1129-1130	File04: 34-35	Part CTPI (Category 3)
1160	File04:65	Part CTPI (Category 3)
1165-1166	File04:70-71	Part CTPI (Category 2(c))
1167	File04:72	Part CTPI (public servant personal information)
1168	File04:73	Part CTPI (Category 2(a))
1169	File04:74	Part CTPI (Category 2(a)) (1st segment) Part CTPI (Category 2(c) - balance)
1185		Full out of scope: unrelated to access application
1186-1187		Part CTPI (Category 3)
1195-1234		94(1)(a) same document - R0602 File03: 43-82
1235		94(1)(a) same document - R0602 File03: 84
1236		94(1)(a) same document - R0602 File03: 86
1237-1238		94(1)(a) same document - R0602 File03: 88-89
1239-1273		94(1)(a) same document - R0602 File03: 91-125
1274		94(1)(a) same document - R0602 File03:129
1275		94(1)(a) same document - R0602 File03:126
1276		94(1)(a) same document - R0602 File03:128
1277		94(1)(a) same document - R0602 File03: 130
1278-1297		94(1)(a) same document - R0602 File03: 131-150
1298-1304		94(1)(a) same document - R0602 File03:152-158
1305-1313		94(1)(a) same document - R0602 File03:160-168
1314		94(1)(a) same document - R0602 File03:170
1320		Part CTPI (Category 1)
1390		Part irrelevant (unrelated information)
1402		Full out of scope: unrelated to access application
1405		Part CTPI (Category 3)
1409-1425		Full CTPI (Category 3)
File06		
4-85		Prior release, not sought by applicant: R0247 File02 78-159
87-140		Prior release, not sought by applicant: R0247 File02 160-213
141-155		Prior release, not sought by applicant: P0029 File03 2-16
159-180		Prior release, not sought by applicant: P0029 File03 17-38
185-249		Prior release, not sought by applicant: P0029 File03 43-107
251-276		Prior release, not sought by applicant: P0029 File03 108-133
277-281		Prior release, not sought by applicant: P0029 File03 108-112
282-290		Prior release, not sought by applicant: P0029 File03 124-132

Page	Original Communities reference (File R0602)	Decision
291-298		Prior release, not sought by applicant: P0029 File03 116-123
299-326		Prior release, not sought by applicant: P0029 File03 156-183
328-332		Prior release, not sought by applicant: P0029 File03 185-189
333		Part irrelevant (unrelated information - 1st 3 segments) Part CTPI (Category 3) (4th segment) Balance of page previously released, not sought by applicant: P0029 File03 190
334		Part irrelevant (unrelated information - both segments) Balance of page previously released, not sought by applicant: P0029 File03 191
335-341		Prior release, not sought by applicant: P0029 File03 192-198
File07		
1-9		94(1)(a) same document - 1184-1192
File08		
2-5		Full out of scope: post application (20.09.10 - 19.01.11)
6		Part irrelevant (post application - first segment: 20.09.10) Part CTPI (Category 3 - balance)
7-8		Part CTPI (Category 3)
14		Part CTPI (Category 2(c))
16		Part CTPI (Category 2(a))
17		Part CTPI (Category 2(a)) - first segment) Part CTPI (Category 2(c) - balance)
File09		
3-49		94(1)(a) same document - R0602 File03: 43-89
50-109		94(1)(a) same document - R0602 File03: 91-150
110-234		94(1)(a) same document - R0602 File01: 152-276
File10		
6		Part CTPI (Category 1)
9		Part CTPI (Category 1)
45		Part CTPI (Category 1)
47		Part CTPI (Category 1)
49		Part CTPI (Category 1)
51		Part CTPI (Category 1)
53		Part CTPI (Category 1)
54-86		94(1)(a) same document - R0602 File03: 209-241
94-106		Full out of scope: post application (17-23.09.10)
136-152		Full out of scope: post application (21-27.09.10)
File11		
1-3		94(1)(a) same document - R0602 File04: 1-3
4-7		94(1)(a) same document - R0602 File01: 322-325
8-75		94(1)(a) same document - R0602 File04: 8-75
File12		
1-93		94(1)(a) same document - R06023 File2 1-93
File13		
1-61		Full out of scope: unrelated to access application
File14		

Page	Original Communities reference (File R0602)	Decision
3-4		Part irrelevant (unrelated information)
5-12		Full out of scope: unrelated to access application
20		Part irrelevant (unrelated information)
21-24		Full out of scope: unrelated to access application
File16		
1-19		Full out of scope: unrelated to access application
File17		
1		94(1)(a) same document - R0602 File05: 1
4-115		94(1)(a) same document - R0602 File05: 2-113
116-117		Part CTPI (Category 3)
119-181		94(1)(a) same document - R0602 File05: 116-178
184-342		94(1)(a) same document - R0602 File05: 180-338
343-397		94(1)(a) same document - R0602 File05: 340-394
File18		
4		Part CTPI (Category 1)
41-43		Full out of scope: post application (17, 23.09.2010)
70-75		Full out of scope: post application (21-22, 27.09.2010 & 1.10.2010)
87-89		Full out of scope: post application (7-8.10.2010)
Additional Pages		
1		Part irrelevant (first segment – post application – 19-21.10.2010) Part CTPI (Category 2(c) – second segment)
2		Part CTPI (Category 2(c))
3		Part CTPI (Category 2(c) – segments 1-6 and 10-11) Part irrelevant (unrelated information – segments 7-9)
4		Part CTPI – residential address